IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

MACA.No. 1878 of 2005

OPMV.1935/2002 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
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APPELLANT/CLAIMANT BEFORE TRIBUNAL.

M.G.SATHEESAN, AGED 37 YRS, MANKUZHAKKAL HOUSE,
N.R.CITY P.O. RAJAKKAD.

BY ADV. SRI.S.SACHITHANANDA PAI
SRI.M.K.THANKAPPAN

RESPONDENTS/RESPONDENTS:
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1. SEKHARAN, S/O.PAPPU, PADINJARE PUTHEN
PURAYIL HOUSE, THANKAM P.O. KOTHAMANGALAM.

2. E.P.ASHRUF, EDAYATTU HOUSE,
KELAMPOOR, ENANALLOOR P.O. MUVATTUPPUZHA.

3. THE ORIENTAL INSURANCE CO.LTD.,
KOTHAMANGALAM.

BY ADV. SRI.S.K.AJAY KUMAR --- R2
R3 BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 11/06/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.A.C.A. No. 1878 of 2005

Dated this the 11th day of June, 2007

Judgment

Koshy, J.

Claimant approached the Motor Accidents Claims Tribunal when he sustained serious injuries in a motor accident caused due to the negligence of the driver of the vehicle insured by the third respondent insurance company. He sustained very serious injuries. Dr.V.A.Bindulal, Lecturer in Orthopaedics, Medical College Hospital, Kottayam issued a certificate that there is 18% whole body disability. The disability certificate is as follows:

> "As per the references cited above, the incumbent had sustained Type I compound fracture shaft of femur (R). Neela of femur (R) and fracture shaft of (R) humerous and was treated by ORIF with 'K' nailing for fracture shaft of femur (R). Multiple screw fixation for fracture Neela of Femur and external fixator for fracture shaft of humerous (R). He was treated as an inpatient from 17.5.2002 to 04.7.2002. External fixator removed on 5.9.2002 and

was immobilised in slab and later 'U' cast for three months.

On clinical and radiological evaluation today, i have noticed the following disabilities:

1. There is mal-union of fracture shaft of humerous (R) with 15 degree anterior angulation with 1.5 c.m. shortening of humerous with limitation of movement of (R) shoulder.

2. Gross limitation of movements of (R) hip with 30 degree limitation of flexion, 10 degree each of adduction and abduction, 12 degree internal rotation and 10 degree external rotation are limited. There is 1 c.m. supra-trochanteric femoral shortening present. Fracture neck united with various angulation.

3. Knee flexion (R) is limited by 30 degree due to post-traumatic stiffness and quadriceps wasting, fracture shaft of femur united well. He needs one more surgery for removal of inplants.

Certified that the percentage of permanent disability of the case is assessed to be Eighteen percentage (7% for fracture humerous plus 8% for fracture NOF plus 3% fracture SOF 18%) as per McBride scale and considering body as a whole."

It was contended by the claimant that he was conducting a S.T.D. booth and he was also doing agriculture work. Even though medical certificate was unchallenged, tribunal fixed only 12% as disability. We are of the view that there was no justification for reducing the disability certified by the doctor.

2. The tribunal found that there is 25% negligence on the part of the appellant. The tribunal held as follows:

> "In connection with the accident the Police has registered a case against the 1st respondent. Ext.A1 is a copy of FIR which would go to prove that the accident happened because of the negligence of the lorry driver. In cross examination PW1 would say that the Police has registered the case and filed charge sheet against the 1st respondent. PW1 admitted that he has not produced the charge sheet and scene mahazar. It is not correct to say that the place of accident was the western half of the road. He further stated that he was keeping his left side and after the accident the lorry dragged the car to the western side of the road. The contesting respondent produced the charge sheet and scene mahazar which were marked as Ext. B1 and B2. In Ext.B1

scene mahazar which shows that the place of accident was 2.90 metres from the western tar end towards east and there the tar road having 7.80 metres width and the road lies north south direction. The admitted case is that at the time of accident the lorry was coming from south to north and the car was from the opposite direction. If it be so the correct path of the car was the eastern half of the road and the correct path of the lorry was the western half of the road. Here in this case it is evidence from Ext.B1 and B2 that the place of accident was the western half of the road which indicate that at the time of accident the lorry was its correct path. It can be seen from Ext.B1 and B2 that the car went its off side and hit against the lorry. The petitioner has not given satisfactory explanation as to why the place of accident has noted as the western half of the road. From the available materials on record I find that the accident happened not only the negligence of the 1st respondent but also the petitioner has contributed some element of negligence and therefore from the available materials on record I find that the accident happened because of the negligence of the 1st respondent as well as the negligence of the petitioner also."

We agree with the above findings. We see no reason for disturbing the finding that there is contributory negligence on the part of the appellant to the extent of 25% and it requires no interference. In the absence of clear data, tribunal has taken Rs.2,000/- as monthly income. Even though evidence was produced to show that he was running a telephone booth apart from his agricultural activities, in the absence of data, we are not disturbing the assessment of income at Rs.2,000/- per month. The tribunal has correctly taken 17 as the multiplier considering the age of the appellant and second schedule and it requires no enhancement. For loss of disability, total compensation awarded by the tribunal was Rs.48,960/-. We have already held that 18% disability should have been taken by the tribunal. If that be so, compensation payable will be Rs.2000 x 12 x 17 x $\frac{18}{100}$ = Rs.73,440/-. The tribunal has awarded only Rs.48,960/- as the compensation. So, additional compensation payable for permanent disability will be Rs.24,480/-. 25% has to be deducted from the above towards contributory negligence. Therefore, additional compensation payable will be Rs.18,360/-. Even though it was argued that

compensation granted under other heads are also very meagre. We are of the opinion that just and reasonable compensation was granted under other heads also. The above additional compensation of Rs.18,360/- should be deposited by the third respondent insurance company with 8% interest from the date of application till its deposit. On deposit of the above compensation, appellant is allowed to withdraw the same.

Appeal is allowed partly.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.A.C.A.NO.1878/2005

JUDGMENT

Dated:11th June, 2007